

Remarks

In the August 12, 2004 Office Action, the Examiner asserts that the application has three distinct inventions and indicates that restriction is required under 35 U.S.C. § 121. Detailed Action ¶ 1. According to the Examiner, claims 1-10 are drawn to a device for measuring temperature, claims 11-23 and 38 are drawn to a device for measuring temperature, and claims 24-37 are drawn to a device and method for measuring temperature. *Id.*

Applicant disagrees with the Examiner's assertions, especially where they contradict the explicit language of the claims, and hereby traverses the restriction requirement. However, to further prosecution, Applicant hereby elects to presently pursue claims 1-10.

Applicant notes that claim 1 may be in the relationship required by 37 C.F.R. § 1.141(a) to the rest of the claims. Thus, upon allowance of the elected claims, Applicant may insist upon allowance of any properly-related claims.

In regards to the Examiner's assertions regarding the claims, Applicant makes special note that the Examiner appears to be incorporating limitations of the dependent claims into the independent claims. Detailed Action ¶¶ 2-4. If this is the case, it is improper. While it is true that the limitations of an independent claim are the limitations of a claim that depends therefrom, 35 U.S.C. § 112, ¶ 4, the limitations of the dependent claim, as long as they are distinct from the limitations of the independent claim, are not the limitations of the independent claim. Also, the Examiner appears to be indicating that dependent limitations of one claim set could not be covered by another claim set. Detailed Action ¶¶ 2-4. Such an assertion would also be improper. A broader claim can readily encompass a narrower claim, even if in another claim set. For at least these reasons, Applicant respectfully requests that the Examiner evaluate each claim based on its express language.

No fees are believed to be required by this paper. If, however, Applicant is incorrect, please apply any charges or credits to deposit account 06-1050, referencing the above-identified attorney document number.

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Respectfully submitted,

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